IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 3563 of 2007()

AGAINST THE ORDER DATED 17/07/2007 IN CMP 2740/2007 IN CC.506/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

.....

PETITIONER: ACCUSED

MUSTHAFA, S/O MUHAMMEDALI,
KALATHIL HOUSE, KUNNAPALLI,
PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENTS: STATE

STATE REPRESENTED BY SUB INSPECTOR OF
POLICE, PERINTALMANNA, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 3563 of 2007

- -

Dated this the 3rd day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable under Sections 279 and 353 I.P.C. The petitioner had appeared before the learned Magistrate and had taken part in the proceedings. But as the petitioner secured employment abroad, he was constrained to leave India. When the matter reached the stage of S.313 examination, Annex.B petition was filed requesting the Court to permit the advocate of the petitioner to answer the questions in S.313 examination. An application for exemption from personal appearance was also filed. The learned Magistrate, by the impugned order, Annex.D, rejected the application to question the counsel on behalf of the petitioner. The learned Magistrate took the view that the decision in **Basavaraj R. Patel** v. **State of Karnataka** (2000 (3) KLT SN 69 case 74) does not enable the Magistrate to

question the counsel. The learned Magistrate felt that the said decision does not permit the Magistrate to question the counsel in the place of the accused and can at worst only enable the Magistrate to permit the accused to answer the questionnaire. A proper application was not there it was held and the same was dismissed.

2. Instead of filing a fresh proper application, the petitioner has rushed to this Court. The prayer made in Annex.B cannot be allowed even with the help of the decision in **Basaravaj** (supra).

3. The petitioner has got only two courses left for him. He can either make a fresh application in terms of the decision in **Basavara R. Patel** or in the alternate he can make a request to the learned Magistrate to exempt him from personal appearance and consequently dispense with the questioning under the provisions of S.313(b) Cr.P.C. Instead of doing either, the petitioner has unnecessarily come to this Court with this Crl.M.C.

4. This Crl.M.C. is accordingly dismissed. I make it clear that the dismissal of this Crl.M.C. will not fetter the rights of the petitioner

to resort to either/both courses and if any such application is filed, appropriate orders will have to be passed by the learned Magistrate.

(R. BASANT)
Judge

tm